

BOARD OF APPEALS CASE NO. 5174

*

BEFORE THE

APPLICANT: Klein Family Development Corp.

*

ZONING HEARING EXAMINER

**REQUEST: Special Exception to conduct personal*
and professional service uses in the VR District;
2-A Newport Drive, Forest Hill**

*

OF HARFORD COUNTY

HEARING DATE: November 14, 2001

*

Hearing Advertised

Aegis: 9/26/01 & 10/3/01

Record: 9/28/01 & 10/5/01

*

* * * * *

ZONING HEARING EXAMINER'S DECISION

The Applicant, Klein Family Development Corporation, is seeking a special exception, pursuant to Section 267-53H(5) and (6) of the Harford County Code, to conduct personal service uses and professional service uses in a VR/Village Residential District.

The subject parcel is located at 2-A Newport Drive, Forest Hill, Maryland, and is part of the Forest Hill Business Park. The parcel is more particularly identified on Tax Map 33, Grid 4D, Parcel 421, Lot 83. The parcel consists of 1.22± acres, is zoned VR/Village Residential and is entirely within the Third Election District.

Mr. Andrew Klein appeared on behalf of the Applicant and stated that the subject parcel was originally part of the Forest Hill Business Park and was zoned VR/Village Residential as a buffer. The parcel is located on Newport Drive and MD Route 24 adjacent to the Enotria Restaurant. The witness stated that the location of this parcel makes it unsuitable for residential use as it is virtually surrounded by commercial uses and borders MD Route 24. The Applicant proposes a 5,000 square foot professional office building which is intended for rentals to personal service use or professional organizations. Access to the building will be from Newport Drive and the construction will be of masonry. The witness anticipates two or three tenants for the building. The witness agreed to comply with the conditions requested by the Department of Planning and Zoning if approval were granted and did not feel as though this use at this location would result in any adverse impacts to neighboring properties.

Case No. 5174 – Klein Family Development Corporation

Mr. Anthony McClune appeared as representative of the Department of Planning and Zoning. The Department agrees with the Applicant that the subject parcel is not compatible or suitable for residential uses.. The parcel, according to Mr. McClune, is oriented toward the business park uses. The Department found that the proposed use at this location was generally consistent with good planning and zoning principals, recommending several conditions of approval.

There were no persons who appeared in opposition to the subject request.

CONCLUSION:

The Applicant, Klein Family Development Corporation is seeking a special exception ,pursuant to Section 267-53H(5) and (6) of the Harford County Code, to conduct personal service uses and professional service uses in a VR/Village Residential District.

Harford County Code Sections 267-53H(5) and (6) provide:

- (5) Personal services. These uses may be granted in the VR District, provided that:
 - (a) A buffer yard of ten feet is provided between the parking area and any adjacent residential lot.
 - (b) Gross floor area shall not exceed five thousand square feet.
- (6) Professional services. These uses may be granted in the VR District, provided that:
 - (a) A buffer yard of ten feet is provided between the parking area and any adjacent residential lot.
 - (b) Gross floor area shall not exceed five thousand square feet.

Based on the uncontroverted testimony of the Applicant's representative and the findings of the Department of Planning and Zoning, it is clear that the specific requirements of the Harford County Code have been met for both personal service use and professional use. A buffer yard of at least ten feet will be maintained and the square footage proposed is 500 square feet.

Case No. 5174 – Klein Family Development Corporation

In addition to the specific requirements of the Code set forth above, an examination of Section 267-9I as it relates to this request also leads to the conclusion that this proposal will not result in adverse or unwanted impacts.

The following is a review of 267-9I of the Harford County Code.

(1) The number of persons living or working in the immediate area.

There has been a considerable amount of residential and commercial development in this area of the Development Envelope. The personal and professional service uses proposed by the Applicant will serve the residents of the area and is consistent with the existing land uses.

(2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.

The property fronts on Rock Spring Road (MD Route 24) and Newport Drive. Route 24 is listed in the County's Transportation Plan as a State minor arterial road. Newport Drive was designed to handle the needs of the Business Park. Access to the proposed use will be from Newport Drive, approximately 160 feet back from Route 24.

(3) The orderly growth of the neighborhood and community and the fiscal impact on the county.

The proposal is a use that is permitted in the VR/Village Residential District with Board approval. There is no reason to believe that proposed uses will have any adverse impacts on the County.

(4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.

The proposal should not have any greater impact on the surrounding community than the uses already established within the business park. Landscaping will be established along the northern property line.

Case No. 5174 – Klein Family Development Corporation

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.*

The Harford County Sheriff's Office and the Maryland State Police will provide police protection. Forest Hill (satellite of Bel Air Fire Station) and the Bel Air Volunteer Fire Departments will provide fire protection. The area is served by public water and sewer. The Applicant will be required to obtain a private hauler to dispose of the trash.

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

The proposal is recognized by the Code as a use that is compatible with other uses in the VR/Village Residential District.

- (7) *The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.*

There are churches and schools in the surrounding community; however, the proposal should not have an adverse impact on the residential uses in the area.

- (8) *The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The proposed use as requested is consistent with the County's Master Plan.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

There does not appear to be any environmental impacts from the proposed development.

Case No. 5174 – Klein Family Development Corporation

(10) The preservation of cultural and historic landmarks.

There are no cultural or historic landmarks impacted by this request.

The standard to be applied in reviewing a request for special exception use was set forth by the Maryland Court of Appeals in Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981) wherein the Court said:

“...The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible *absent any facts or circumstances negating the presumption*. The duties given the Board are to judge whether the *neighboring properties in the general neighborhood would be adversely affected* and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. (Citations omitted). These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied.” (Emphasis in original).

Case No. 5174 – Klein Family Development Corporation

The Court went on to establish the following guidelines with respect to the nature and degree of adverse effect which would justify denial of the special exception:

“Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” 291 Md. At 15, 432 A.2d at 1327.

There was no evidence presented that rebutted any of the testimony of the Applicant’s representative or the findings and testimony of the Department of Planning and Zoning. In the absence of any facts to the contrary, the Hearing Examiner concludes that the proposed use at the proposed location will not have impacts above and beyond those normally associated with such uses despite their location within the zone.

The Hearing Examiner recommends approval of the request subject to the following conditions:

1. The Applicants prepare a detailed site plan to be reviewed and approved through Development Advisory Committee.
2. A landscaping and buffer plan shall be submitted to the Department of Planning and Zoning for review and approval with the site plan. Landscaping and buffering shall be provided along the northern property line between the existing residential uses and the proposed building and parking area.
3. All lighting shall be designed to be directed on-site and shall not reflect or shine on the adjacent roads and properties. A lighting plan shall be submitted to the Planning Department for review and approval.
4. The Applicant shall obtain all necessary permits and inspections.

Date DECEMBER 13, 2001

William F. Casey
Zoning Hearing Examiner

Case No. 5174 – Klein Family Development Corporation